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was taken. *Held*, that the appeal be dismissed. *Long v. Long*, 84 Atl. 375 (Md.).

The appeal in the principal case was prematurely brought, but the court laid down the rule that an executor can never plead the Statute of Limitations to his own debts to the estate. Such broad language appears in one other case. *Thompson v. Thompson*, 77 Ga. 692, 3 S. E. 261. But there it is probable, and in the cases it cites it is clear, that the statute had not run at the testator's death. *Ingle v. Richards*, 28 Beav. 366; *Juillard v. Orem's Ex'rs*, 70 Md. 465, 17 Atl. 333. Where the statute had run before the testator's death it has been assumed that it could be pleaded. *Haines v. Haines' Ex'rs*, 15 Atl. 839 (N. J.). The theory of the cases is that equity presumes that to be done which should be done, and considers the debts turned into assets in the executor's hands. *Tarbell v. Jewett*, 129 Mass. 457. See 23 HARV. L. REV. 391. A court influenced by the old dislike of the Statute of Limitations might even hold a debt already barred to be assets. But to-day this dislike seems to have passed. See *Pritchard v. Howell*, 1 Wis. 131, 136; *Campbell v. Haverhill*, 155 U. S. 610, 617, 15 Sup. Ct. 217, 220. Furthermore, the evidence as to the original debt in the principal case would be more than six years old, a condition which the statute is designed to prevent. It is submitted that a rule of equity giving to legatees the same rights as the testator should not be construed to give them greater rights.

EXEMPLARY DAMAGES — EVIDENCE OF DEFENDANT'S WEALTH. — In an action of assault and battery, to aid the jury in assessing punitive damages the plaintiff offered evidence tending to show the defendant's reputed wealth. *Held*, that such evidence is admissible. *Bogue v. Gunderson*, 137 N. W. 595 (S. D.).

The assessing of punitive damages over and above that claimed by way of compensation has been very generally adopted, "for the sake of example, and by way of punishing the defendant." S. D., REV. CIV. CODE, § 2292; *Stimpson v. Rail Roads*, 1 Wallace, Jr., 164; *Grable v. Margrave*, 4 Ill. 372. The great weight of authority holds that evidence of the defendant's wealth is admissible in determining such damages. *Greeneberg v. Western Turf Association*, 140 Cal. 357, 73 Pac. 1050; *Pullman Palace Car Co. v. Lawrence*, 74 Miss. 782, 22 So. 53. Unfair discrimination against wealth naturally suggests itself as an argument against this result. But, since the object is to inflict on the particular defendant punishment of a desired degree of stringency, proportioning the fine to his income is obviously desirable. Penal statutes make no such discrimination, but it cannot be doubted that judges, in assessing fines, often consider the wealth of the defendant. The dissenting cases are also influenced by the fear of diverting the attention of juries from the nature of the act and of unfairly privileging insolvent defendants. *Givens v. Berkley*, 108 Ky. 236, 56 S. W. 158; *Southern Car & Foundry Co. v. Adams*, 131 Ala. 147, 32 So. 503. But such a danger should only exclude evidence when its relevancy is small. In the principal case, compensation being no longer in question, the issue has narrowed into what assessment upon the wealth of the particular defendant will best effect present punishment and future example.

FEDERAL COURTS — JURISDICTION — ENJOINING PROCEEDINGS IN STATE COURTS. — The plaintiff gas company sued in the federal courts to enjoin the enforcement of an unconstitutional ordinance, imposing a fine for failure to maintain a certain pressure. During the pendency of this suit, the city began proceedings in the state courts to compel the plaintiff to lower its rates. *Held*, that the city will not be enjoined by the federal court from proceeding in the state courts. *Kansas City Gas Co. v. Kansas City*, 198 Fed. 500 (Dist. Ct., W. D. Mo.).

The statute prohibiting a federal court from enjoining suits in state courts

applies only to suits pending at the time the federal action is brought. U. S. COMP. STAT., 1901, § 720; *Dietzsch v. Huidekoper*, 103 U. S. 494. If jurisdiction first attaches in the federal court it will enjoin subsequent proceedings in a state court which would defeat the jurisdiction. *Ex parte Young*, 209 U. S. 123, 28 Sup. Ct. 441; *Starr v. Chicago, R. I. & P. Ry. Co.*, 110 Fed. 3; *aff'd in Prout v. Starr*, 188 U. S. 537, 23 Sup. Ct. 398. It seems clear, however, that issues not directly decided by the federal court can subsequently be passed upon by the state court. *Buck v. Colbath*, 3 Wall. (U. S.) 334; *Harkrader v. Wadley*, 172 U. S. 148, 19 Sup. Ct. 119. Whether or not the second suit is an infringement on the federal jurisdiction seems to depend on whether the federal judgment could be pleaded as *res judicata*. See *Harkrader v. Wadley*, *supra*, 168. This plea will only bar suits on questions necessarily decided in the first case. *Sargent v. New Haven Steamboat Co.*, 65 Conn. 116, 31 Atl. 543. If the suit is begun in the state court before the federal suit is terminated, the state suit can be temporarily enjoined if it appears that it may interfere with the ultimate decree of the federal court on the above principle. *Wagner v. Drake*, 31 Fed. 849; *French v. Hay*, 22 Wall. (U. S.) 250. As the reasonableness of the rates was hardly one of the issues to be decided in the principal case, the court correctly refused to enjoin the suit to reduce them.

INSURANCE — RIGHTS OF BENEFICIARY — CHANGE OF BENEFICIARIES: WHEN CHANGE IS CONSIDERED COMPLETE. — The insured took out a life insurance policy with the defendant, naming his wife as beneficiary. By its terms he had the right to change the beneficiary by filing with the defendants written notice, the change to take effect upon the indorsement of the same on the policy by the company. The insured sent notice that the plaintiff was to be made the beneficiary but died before it reached the defendants. *Held*, that the plaintiff may recover. *Mutual Life Ins. Co. v. Lowther*, 126 Pac. 882 (Colo.).

Equity's jurisdiction to afford relief from accident being limited, it will not aid mere intention without substantial performance. *Holland v. Taylor*, 111 Ind. 121, 12 N. E. 116; *Ireland v. Ireland*, 42 Hun (N. Y.) 212. But in many cases it has been held that where there is no express condition precedent and the insured has substantially complied with the requirements for changing the beneficiary, but is prevented from completing them by death, equity will treat the change as completed. *Berkeley v. Harper*, 3 App. Cas. (D. C.) 308; *Luhrs v. Luhrs*, 123 N. Y. 367, 25 N. E. 388. These are principally cases where the real controversy is between two beneficiaries. *Titsworth v. Titsworth*, 40 Kan. 571; *National American Association v. Kirgin*, 28 Mo. App. 80. In analogous cases of defective execution of powers, equity exercises a similar jurisdiction, relieving against the accident of death. *Sayer v. Sayer*, 7 Hare 377. Equity, indeed, will not ordinarily perfect an incomplete gift. But in analogous cases of mistake where property is in dispute between two donees, equity will interfere to give it to the one intended by the donor. *Huss v. Morris*, 63 Pa. St. 367. In the principal case, however, the provision as to the time of taking effect seems a clear condition precedent. *Sheppard v. Crowley*, 61 Fla. 735, 55 So. 841; *Sangunitto v. Goldey*, 88 N. Y. App. Div. 78, 84 N. Y. Supp. 989. *Contra*, *Heydorf v. Conrack*, 7 Kan. App. 202, 52 Pac. 700. Acts by the insured can hardly amount to substantial performance when the defendant has made an absolute condition for the very purpose of protecting itself against a possible double liability. *Sheppard v. Crowley*, *supra*. Especially is this true where the insurance company, as here, is actually setting up the defense for its own benefit.

JURY — WAIVER OF TRIAL BY JURY: CONSENT TO TRIAL BY FIVE JURORS. — In a trial for assault before a Court of Special Sessions the defendant, after demanding a jury, consented to a panel of five. The lower court, without ref-